

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3312 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SAJANBEN SHANSHANG PARMAR

Versus

SWASTIK VIDYALAYA

Appearance:

1. Special Civil Application No. 3312 of 1989
MR RA MISHRA for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR MA BUKHARI, AGP for Respondent No. 2
MR VH DESAI for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2003

ORAL JUDGEMENT

This matter is called out in the first session.
It is again called out in the second session. Neither
the petitioner nor his advocate remained present at the
time when the matter is called out on both the occasions.
The Court is, therefore, of the view that the petitioner
is not interested in pursuing the matter. Hence, the

petition is dismissed for default. Interim relief granted earlier by this Court stands vacated.

(K.A.Puj,J.)

FURTHER ORDER : -

After the above order is dictated and transcribed and before it is signed, Mr.R.A.Mishra, the learned advocate appearing for the petitioner requested to hear him on merits of the matter and accordingly he is heard. He has submitted that the father of the petitioner namely Shri Shanshang Chhaganshang Parmar was serving as a peon with the respondent No.1 school for about more than 15 years and he expired on 28-4-1988. He has further submitted that the State of Gujarat has passed a resolution dated 4-7-1988, whereby it has been resolved to give service to the dependant of deceased employees of the Private Secondary School on compassionate ground. Based on this resolution, the petitioner made an application to the respondents No.1 and 2 on 15-2-1989. Thereafter certain details and particulars which were called for were furnished by the petitioner. However, no appointment was given to the petitioner on the ground that there was no clear cut vacancy of the said post. The petitioner was informed by the respondent No.2 that one Mr.M.B.Baraiyya, who was considered to be surplus was appointed with effect from 5-4-1999 and hence, there was no vacancy of a peon in the respondent No.1-school and on that count, the petitioner's application for appointment on compassionate ground was not considered.

2) Being aggrieved by the said decision, the petitioner has challenged the said action of the respondent No. 2 in the present petition.

3) This Court has issued the rule and granted ad-interim relief in terms of para 14(C) of the petition, whereby the respondents No.1 and 2 were directed not to fill in post of the peon which has fallen vacant because of the death of the father of the petitioner, in respondent No.1-school. Because of the stay granted by this Court, the appointment of the peon in the respondent No.1-school could not be made.

4) The respondent No.1 thereafter, moved Civil Application No.1980/1993 before this Court making the prayer for modification of the order passed in Special Civil Application No.3312/1999 permitting the school management to appoint the peon on purely temporary and ad-hoc basis till final disposal of the main petition and

seeking direction to the respondent No.2 to grant N.O.C. subject to the condition that the new appointee would not claim right on the post of peon because of the pendency of the petition. This Court vide its order dated 24-9-1996 disposed of the said Civil Application holding that ad-interim relief made on Special Civil Application No.3312/1999 and confirmed on 25th April, 1991, was vacated on condition that any appointment made to the post of peon in the applicant school hereafter shall be adhoc. The person so appointed shall have no claim to the post and the same shall be subject to the result of this petition.

5) The respondent No.3, thereafter moved Civil Application NO.11682/2000 seeking direction to the office to place the main petition for final hearing as expeditiously as possible. In the said Civil Application it was mentioned that because of the interim order passed by this Court on 14-6-1989, the post of the peon was not filled in. The respondent No.3, however, has not referred to the order passed by this Court on 24-9-1996 in Civil Application No.1980/1993. In any case while disposing of the Civil Application No. 11682/2000, this Court has directed the office to place the main matter for final hearing board in the week commencing from 22nd September, 2002 and accordingly the said Civil Application was disposed of.

6) I have heard Mr.R.A.Mishra, the learned advocate appearing for the petitioner and Mr.M.A.Bukhari, the learned Assistant Government Pleader for respondent No.2 and Ms.Sejal Sutaria, the learned advocate appearing for Mr.V.H.Desai on behalf of respondent No.3.

7) The petitioner has sought appointment on compassionate ground, however, the same was denied to him on the ground that there was no clear cut vacancy of a peon in the respondent No.1-school. This fact was made clear from the letter dated 12-4-1989 issued by the respondent No.2 to the respondent No.1, wherein it is specifically stated that the respondent No.3, who was a surplus peon was directed to join the duty as a peon in the respondent No.1-school, as a result of the vacancy arising due to the death of the peon of that school namely Shri S.C.Parmar. Because of the stay granted by this Court, the appointment of respondent No.3 could not take place. The interim order passed by this Court in the main petition was subsequently modified by this Court on 24-9-1996 and even at that point of time also, the appointment of the petitioner was not made but the respondent No.1-school was permitted to make adhoc

appointment. Since the respondent No.3 was already a surplus peon and got the appointment order in his favour on 5-4-1989, the petitioner cannot claim appointment on the said post and if the petitioner was denied the appointment on compassionate ground because of this reason, it cannot be said that the said decision is in any way improper or unreasonable. The resolution issued by the State Government with regard to the appointment on compassionate ground can be pressed into service only in case there is clear cut vacancy and if there is no vacancy, the authority cannot be compelled to absorb the dependent of the deceased employee. I, therefore, see no justification in interfering with the order passed by the respondent No.2 as the said decision cannot be said to be an arbitrary or discriminatory one, which call for interference of this Court while exercising the writ jurisdiction under Article 226 of the Constitution of India.

The petition, therefore fails. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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